

**IN THE UNITED STATES COURT OF APPEALS****FOR THE ELEVENTH CIRCUIT**

RECEIVED  
APR -3 A 9:17  
DEBRA P. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF ALA.  
No. 07-11287-P

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 28 2007

THOMAS K. KAHN  
CLERK

IN RE:

RICHARD F. ALLEN

Petitioner.

-----  
On Petition for Writ of Mandamus to the United States  
District Court for the Middle District of Alabama  
-----

BEFORE: TJOFLAT, BIRCH and BLACK, Circuit Judges.

BY THE COURT:

We hereby vacate our previous order staying the order of the magistrate judge in this case. This court was under the misapprehension that the order which is the subject of this petition for mandamus relief was that of the district court. It appears that the discovery order entered by the magistrate judge was never subject to a motion for reconsideration pursuant to 28 U.S.C. § 636 (b)(1)(A) and Fed.R.Civ.P. 72(a). In sum, the petitioner is asking us to direct the district court to vacate an order when the petitioner, although required by law, has not himself applied to the district court for relief in the first instance. Thus, the 23 March

~~2007 order is not a final, reviewable order of the district court. Accordingly, the~~  
petition for mandamus relief is dismissed.

It Is So Ordered.